

PROBATE ADMINISTRATION GUIDE

CHAPTER 1 – WHEN SOMEONE DIES

These are some of the immediate steps that need to be considered when someone dies for whom I am responsible.

When a loved one dies, the details that need to be taken care of by survivors may be particularly overwhelming during such an emotional time. This checklist is intended to help survivors handle the situations that need tending to, both at the time of death and afterward, as efficiently as possible.

Disposition of Remains: Regardless of the nature or size of the estate involved, there are always questions involving decedent's funeral and disposition of the body. These issues include the possibility of an inquest, decedent's possible donation of body parts, and effectuating funeral directions, if any. All of these matters must be addressed in close consultation with the decedent's survivors, both from a psychological and legal perspective.

Autopsy or coroner's inquest

If granted the requisite authority (see below), a cemetery authority or licensed funeral director, or a licensed hospital or its authorized personnel, may permit or assist, and a physician may perform, an autopsy of decedent's remains. There is no implied authority to order an autopsy, regardless of the reason. Rather, an autopsy may be performed only as follows: When authorized by decedent's will or by a written instrument executed by decedent before death; or when authorized by writing or telegram from, or recorded telephone conversation with (a) The surviving spouse; (b) A surviving child or parent; (c) A surviving brother or sister; (d) Any other kin or person who has acquired the right to control the disposition of the remains; (e) A public administrator; (f) A coroner or any other duly authorized public officer. In limited circumstances, the authority to perform an autopsy derives from other statutes:.

Anatomical gifts

Gifts of body parts are governed by the California Uniform Anatomical Gift Act. Decedents usually make these donations personally; but certain surviving relatives and fiduciaries may also make them. Sometimes the decedent has executed a Power of Attorney dealing with this authority.

The funeral

Prior to death, persons are entitled to give oral or written instructions as to the preferred disposition of their remains (i.e., manner of disposition, type of funeral, etc.). Subject to the coroner's statutory responsibilities, these instructions must be followed. Decedent's funeral directions control whether or not they are made in a will. And, if made by will, the instructions must be carried out immediately, without delay for probate and notwithstanding the will's validity in other respects. Access to decedent's safe deposit box for possible burial instructions and will. Individuals in possession of the appropriate keys have

a statutory right of limited access to a decedent's financial institution safe deposit box before letters issue. There must be no living co-owner of the box and the person seeking entry must provide reasonable proof of his or her identity and proof of the decedent's death (e.g., certified copy of decedent's death certificate). Entry may be made only under supervision of the institution's employees. And, although the person entering the box may remove burial instructions, wills and trusts, he or she must photocopy any removed wills or trusts and place the copies back in the box. Moreover, removed wills must be filed with the superior court and copies mailed or delivered to the named executor or beneficiary.

Funeral decisions where no instructions from decedent

If decedent has not provided for his or her interment by a will or other direction, the right to control disposition of the remains descends to the surviving relatives. The statutory schedule of priority is: first to the surviving spouse, then to the surviving children, parents, next of kin under laws of succession, or the public administrator.

Prepaid funeral contracts

You should ascertain whether decedent had executed a prepaid funeral contract so that you can make arrangements and inform any relatives accordingly.

Obtain certified copies of death certificate

Certified copies of the death certificate will be needed to effect certain transfers of decedent's assets (e.g., securities, joint tenancy property; and, if applicable, pursuant to a Sec. 13100 declaration or a Sec. 13200 declaration. They will also be needed to apply for payment of various death benefits. Usually, the funeral home will provide plenty of copies. But the trustee/executor should verify that the immediate relatives have received the copies and should caution them to preserve those copies.

CHAPTER 2 – IS PROBATE REQUIRED

Probate is a court supervised process which is required of many estates after death. It is the means by which property is passed on to one's heirs. You may have noticed that there are a number of attorneys advertising ways to avoid probate. If you don't know what that is about, consider the following:

- **Probate is a lengthy process**

Probate refers to a court proceeding that requires the filing of numerous forms and documents and is meticulously supervised by the courts. The probate of an estate will usually last more than six months and may take years. During that time, property you owned together will be tied up and you may have restricted or no access to important funds and accounts. The sale of property may be complicated by the need for court approval of the terms of sale.

- **Probate can be expensive**

Both the executor and the attorney for the estate are entitled to be paid fees for their work during a probate. While their fees are regulated by the state, they can be considerable and unnecessary.

For example, the fees in an uncomplicated estate that is worth \$150,000 will be about \$4,150 for the executor and the same amount for the attorney.

The following table sets forth the California statutory fee schedule for the Executor of the estate and the attorney for the estate.

Probate Fees (for Administrator and Attorney, each)	Size of Estate (Gross Value)
4 % of first	\$100,000
3 % of next	\$100000
2 % of next	\$800,000
1 % of next	\$15 million

A fairly modest estate of a home, automobile, furniture and IRA or pension can easily reach \$200,000 in value. The probate fees for each the executor and the attorney will be \$7,000. Additional fees are added for such things as the sale of assets, tax matters or other extra activity.

Estates Of Less Than \$150,000

If your estate is below \$150,000 and there is no real estate, there is a simplified procedure for handling the estate after death. Automobiles do not count in the \$100,000 limit and there are several other exclusions that make this a useful approach for many people. There is an affidavit (California Probate Code §13100) to complete and much of your property can be transferred in this way.

Real Property Less Than \$50,000

If the gross value of all real property in California is worth less than \$50,000, it may avoid probate and can be transferred by a "Affidavit Re Real Property of Small Value" (California Probate Code §13200) (This is a state printed form, Judicial Council form DE-305).

Motor Vehicles

A simple, non-probate procedure is available to transfer title to automobiles and registered boats in California.

Where there is no other property that needs to be probated, a person named in a Will or an heir of a deceased person can complete a declaration and submit it to the Department of Motor Vehicles in order to transfer title to a registered motor vehicle from the deceased to themselves.

This same method is used when the vehicle was transferred to a living trust. A form for this purpose is available from the DMV. You will have to present the registration form as well.

Mobile Homes

The procedure to transfer title to a registered mobile home is similar to that for a motor vehicle. The form to do so is available from the California Department of Housing and Community Development. You must wait for 40 days after death for this procedure

CHAPTER THREE - REASONS FOR PROBATE

One of the primary reasons **Living Trusts** have gained popularity is the cost and length of court probate. In Los Angeles, for example the average probate case will take 2 years or more to complete.

This expense and time delay may, however, be worth it. The purpose of probate is to require court supervision over the process of paying your final debts and distributing your property. During this process, your executor or administrator will file documents with the court on each step of the process. The court then will have an opportunity to make certain that everything is handled in a legal manner.

Likewise, the probate process provides for protection for the persons who inherit from you from your creditors. In the probate proceeding, creditors have 4 months after your estate is opened and a notice is published to file any claims. If they are not filed within this period, they cannot later collect the amounts owed. The court approves the payment of any claims and if there is a dispute, the court will settle it.

When Is Probate Required?

For a discussion of steps you can take prior to death to avoid probate, [click here](#). If these steps have not been taken prior to death, the following is a guide to whether a formal probate is required or if alternatives are available.

Probate Not Required	
Nature of Assets in Estate	Probate Alternatives
Property passing by contract (Insurance, IRA's, pensions, annuities, etc.)	→ Contact the insurance company, financial institutions, employer, etc. to complete their forms
Joint tenancy property	→ Clear title, joint tenancy deed, etc. No probate required
Estate value less than \$150,000, decedent leaves surviving spouse and/or children	→ File Petition with probate court to set aside estate

Property passing to surviving spouse	➔	File Spousal property Petition with court	or	File formal Probate proceeding with court
Where none of the above apply	➔	Where gross value of estate is less than \$150,000	➔	File petition for order determining succession to property, or for personal property only, collect assets from holder with an affidavit under Section 13100
	➔	Where gross value of all real property does not exceed \$50,000	➔	File an affidavit with holder of real property under section 13200

In all other cases, a formal probate proceeding is required.

➔Note: In all cases, the holder of a will must file that will with the superior court clerk in the county where the decedent resided within 30 days of death and must give notice to the person(s) named in the will as executor. No other notice is required to be given of the will, unless probate proceedings are commenced.

Who Can Initiate Probate?

Under California law, any "interested person" may begin the probate process. Generally this will mean any heir, relative, friend or creditor of the decedent. Anyone named as executor or beneficiary in a Will can initiate probate, as can a successor trustee of the decedent's trust. *Cal. Probate Code §48.*

There may be more than one person who wishes to initiate probate, in which case each would have to take steps to begin the process and the court would decide which to appoint as administrator of the estate.

The probate proceeding is begun by filing a **Petition for appointment as Administrator of the Estate.** *Cal. Judicial Council Form DE-111*

When Must a Petition Be Filed?

There is no specific time that a Petition must be filed. However, an executor named in a Will must file a Petition within 30 days of knowledge of death or the court may hold they have waived the right to appointment.

Likewise, any person holding the Will of a decedent must lodge the original Will with the court clerk in the county of decedent's final residence within 30 days.

Where the Petition Must Be Filed

The petition for Probate must be filed in the county in which the decedent was domiciled (permanent residence) or, if not a resident of California, where he or she has property.

Options in the Petition

There are a number of options on the Petition for probate, many depending upon whether the deceased left a will, whether the will named an executor and whether the will waived the requirement that the administrator post a bond.

The person filing the Petition also has the option of asking the court to grant Independent Authority to act. Normally, the law requires that most significant acts by the administrator be approved by the court prior to the act taking place. For example, if the administrator needs to sell the family residence in order to pay bills, or make the distributions called for in a Will, the administrator must first petition the court for the approval of the sale.

As will be discussed in more detail later, this entails a hearing at which others may overbid the successful buyer and results in a court order transferring the property to the eventual buyer. This then gives the administrator security that his or her actions are confirmed by the court and insures against subsequent challenge.

With Independent Authority, the same sale can be done without court approval. The sale, is however, subject to challenge at any time during the probate.

What Are The First Steps?

Along with filing the Petition for Probate, there must be a publication of a Notice of Petition in an approved newspaper in the same county. This gives notice to all creditors and others who may be interested in the estate of the hearing on the Petition and gives them an opportunity to oppose the Petition. Notice must be given to all heirs and beneficiaries, among others.

The court will set a hearing date for the Petition. If everything is in perfect order on the petition, it will be approved. If there are any defects, and unless one is highly proficient in these matters it is likely there will be some, the matter will be continued until they are cured. If there are competing Petitions by different persons seeking to administer the estate, the matter will be set for formal hearing.

After the Petition is Approved

Under California law, the administrator is required to post a bond equal to the value of the estate in order to be appointed. However, the Will of the deceased may waive bond. If so, the Court ordinarily will not require a bond unless Independent Authority to Act (see below) is approved. Usually the bond companies have representatives at the hearing to assist with the securing of a bond.

Independent Authority to Act

In the Petition, authority to act on matters of estate administration may be requested. Ordinarily, most acts of the administrator must be pre-approved by the court. For example the sale of real property requires that a court hearing be set up. At this hearing, the administrator requests approval of the sale to the successful buyer. This sale is subject to any over-bidders at the hearing. The highest qualified bid will get the court's approval and be the final buyer.

The administrator may wish to avoid this hearing and take on the responsibility of finding a buyer on its own. To do so requires that the court have granted authority to act independently. The risk is that without prior court approval of the sale, the administrator may be liable for any underbidding or other defects of the sale.

Finding Out About the Estate

One of the first important duties is to find out what was owned by the decedent and what was owed to others. The gathering of this information is essential for two reasons:

1. The estate's assets must be stated on an Inventory and Appraisal form. This form is prepared by the administrator and appraised by the Probate Referee. The Probate Referee is appointed by the court to appraise estate assets. All assets except a few that have ascertainable value, such as bank accounts, and in some cases personal possessions of the decedent, must be given a value by the Probate Referee. The administrator can give information to the referee to assist in this process, but it is up to the referee to make the determination. The value so determined is gross value, not net of debts. This value will determine what the starting point for the administration of the estate is.
2. By law, creditors have 120 days after the issuance of Letters Testamentary to file any claims against the estate. If not filed within that period, they are unenforceable claims. In order to solidify this protection for the estate, it is useful to ascertain the names and addresses of creditors and give them notice of the probate proceeding. In addition, certain government claims may not be subject to this rule and they must be paid. These include Social Security overpayments and Medi-Cal benefits paid on behalf of the deceased.


Paying Debts

If a claim is filed by a creditor, the administrator must either approve or disapprove it. If approved, it usually can be paid from estate funds when possible. If the administrator believes a claim is not valid, a form must be filed with the court denying the claim. The creditor must then sue the estate.

Other items, such as utility bills necessary to keep estate property in good condition must be paid from estate funds.

Letters Testamentary

Once the Petition is approved and the bond posted, the Court will issue a document called Letters Testamentary. This is a form that is a certificate of the authority of the administrator to act on behalf of the estate. It will be required by several institutions in the process of handling the estates affairs.



CHAPTER 4 -INTESTACY

When a person dies without having left a will or having transferred property to a living trust, their property is governed by a set of laws collectively referred to as intestacy (literally, without a testate). Each state has a different set of such rules. Below is a summary of the provisions of California law. In effect, the state legislature has written a will for you.

Remember, this is a summary and specific situations require specific research for accuracy.

If Surviving Spouse	
Community Property and Quasi-community property	All to spouse
Separate Property	All to spouse if there is no surviving children, parent, brother, sister, or children of deceased brother or sister
	One-half to spouse if:
	Deceased left one child or issue of one deceased child
	Decedent leaves no child but parent or parents or their children (brothers or sisters) or their children
	One-third to spouse if:
	Decedent leaves more than one child
Where decedent leaves one child and the issue of one or more deceased children	
Where decedent leaves issue of two or more deceased children	
No Surviving Spouse (or portion not going to Surviving spouse above)	
In order of preference	

If children	All to issue of decedent equally if of same degree of kinship
If no children	To decedent's parents equally, or, if none, see below
	To the issue of parents or either of them, equally if all of the same degree of kinship, or, if none, see below
	To decedent's grandparents equally, or, if deceased, to their issue equally if all the same degree of kinship, or, if none, see below
	To the issue of a predeceased spouse, equally if all the same degree of kinship, or, if none, see below
	To the next of kin in equal degree, but where there are two or more collateral kindred in equal degree who claim through different ancestors, those who claim through the nearest ancestor are preferred to those claiming through an ancestor more remote. If none, as below
	To the parents of a predeceased spouse equally, or if none, to the issue of such parents equally if all the same degree of kinship.
<p>Note: Persons of the same generation or equal degree of kinship divide the property into equal shares. Those who claim through a deceased heir, share the share of the deceased heir equally.</p>	



Below is a sample of the information to be provided at the beginning of the probate process.

CASE INFORMATION

County: LOS ANGELES
Street Address of Court: 111 North Hill Street
Mailing Address: 111 North Hill Street
City and Zip Code: Los Angeles, 90012
Branch Name: Stanley Mosk Courthouse on Hill St.

DECEDENT INFORMATION

Name: John Doe
Address: 100 Main Street, Anytown, California 90000
Description of Estate: Testate
Age: 80
Date of Birth: 01/01/1934
Date of Death: 01/01/2014
Place of Death: Los Angeles, CA
Date of Will: 02/02/1999
Social Security Number: 1234567891

DECEDENT'S SIGNIFICANT OTHER

Name: Jane Doe
Relationship: Spouse
Age: 70
Address: 100 Main Street, Anytown, California 90000

DECEDENT'S CHILDREN

Name: Adam Doe
Relationship: Son
Age: 50
Address: 222 State Street, Everytown, California 90000

Name: Betty Doe
Relationship: Daughter
Age: 32
Address: 4444 California Avenue, Everytown, California 90000

DECEDENT'S PERSONAL REPRESENTATIVE

Name: Jane Doe
Relationship to Decedent: Spouse
Age: 70

Address: 100 Main Street, Anytown, California 90000

DECEDENT'S BENEFICIARIES

Name: Jane Doe

Relationship to Decedent: Spouse

Age: 70

Address: 100 Main Street, Anytown, California 90000

Name: Adam Doe

Relationship to Decedent: Son

Age: 50

Address: 222 State Street, Everytown, California 90000

Name: Betty Doe

Relationship to Decedent: Daughter

Age: 32

Address: 4444 California Avenue, Everytown, California 90000

Name: Samuel Doe

Relationship to Decedent: Brother

Age: 75

Address: 9999 Main Street, Anytown, California 90000

CHAPTER 6 – DUTIES AND LIABILITIES

The form displayed below must be signed by the person seeking to be appointed. It describes some of the duties.

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, state bar number, and address): Philip J. Hoskins SBN: 04668 PHILIP J HOSKINS 10940 Wilshire Boulevard, Suite 1400 Los Angeles, California 90024 TELEPHONE NO.: 310-209-8080 FAX NO. (Optional): 310-208-8582 E-MAIL ADDRESS (Optional): philip@estatelawyer.onmicrosoft.com ATTORNEY FOR (Name): Elizabeth Ann Loebs	FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES STREET ADDRESS: 1945 South Hill Street MAILING ADDRESS: 1945 South Hill Street CITY AND ZIP CODE: Los Angeles, 90007 BRANCH NAME: Stanley Mosk Courthouse	
ESTATE OF (Name): Anthony John Barletta <div style="text-align: right;">DECEDENT</div>	
DUTIES AND LIABILITIES OF PERSONAL REPRESENTATIVE and Acknowledgment of Receipt	CASE NUMBER:

DUTIES AND LIABILITIES OF PERSONAL REPRESENTATIVE

When the court appoints you as personal representative of an estate, you become an officer of the court and assume certain duties and obligations. An attorney is best qualified to advise you about these matters. You should understand the following:

1. MANAGING THE ESTATE'S ASSETS

a. Prudent investments

You must manage the estate assets with the care of a prudent person dealing with someone else's property. This means that you must be cautious and may not make any speculative investments.

b. Keep estate assets separate

You must keep the money and property in this estate separate from anyone else's, including your own. When you open a bank account for the estate, the account name must indicate that it is an estate account and not your personal account. Never deposit estate funds in your personal account or otherwise mix them with your or anyone else's property. Securities in the estate must also be held in a name that shows they are estate property and not your personal property.

c. Interest-bearing accounts and other investments

Except for checking accounts intended for ordinary administration expenses, estate accounts must earn interest. You may deposit estate funds in insured accounts in financial institutions, but you should consult with an attorney before making other kinds of investments.

d. Other restrictions

There are many other restrictions on your authority to deal with estate property. You should not spend any of the estate's money unless you have received permission from the court or have been advised to do so by an attorney. You may reimburse yourself for official court costs paid by you to the county clerk and for the premium on your bond. Without prior order of the court, you may not pay fees to yourself or to your attorney, if you have one. If you do not obtain the court's permission when it is required, you may be removed as personal representative or you may be required to reimburse the estate from your own personal funds, or both. You should consult with an attorney concerning the legal requirements affecting sales, leases, mortgages, and investments of estate property.

2. INVENTORY OF ESTATE PROPERTY

a. Locate the estate's property

You must attempt to locate and take possession of all the decedent's property to be administered in the estate.

b. Determine the value of the property

You must arrange to have a court-appointed referee determine the value of the property unless the appointment is waived by the court. You, rather than the referee, must determine the value of certain "cash items." An attorney can advise you about how to do this.

c. File an inventory and appraisal

Within four months after Letters are first issued to you as personal representative, you must file with the court an inventory and appraisal of all the assets in the estate.

It is my responsibility as your attorney to see that all the steps in the administration of the estate are taken, including the preparation of all necessary legal documents. From time to time I will communicate with you about various aspects of administration of the estate, but you should feel free to call any time you have a question.

In general, all steps in the administration of the estate are directed toward three goals: collecting and managing assets, paying debts and taxes, and distributing the balance of the assets as provided in the will. As executor, you represent the estate and must carry out the terms of the will; you do not represent the heirs or beneficiaries of the estate.

As executor/administrator, you must not do any of the following without consulting me first:

1. Carry on the decedent's business.
2. Perform the decedent's contracts.
3. Make any contracts binding on the estate.
4. Borrow money, sign notes, or execute a mortgage, deed, or other lien agreement on estate property.
5. Give away, sell, or lease any estate property or buy any property for the estate.
6. Distribute estate property to an heir or beneficiary.
7. Deposit estate funds in your personal account (not allowed under any circumstances).
8. Act without authority of your coexecutor or coadministrator.
9. Pay or compromise any debts or claims against the estate. Claims arising before the date of death and funeral expenses require presentation of a verified claim to you; expenses of estate administration arising after the date of death do not. Neither claims nor expenses of estate administration should be paid, however, if there is any question about the estate's ability to pay all of them.
10. Sell estate stocks or bonds, exercise subscription rights, or buy stocks or bonds for the estate.

In your petition, I asked the court to grant you authority to administer the estate under the Independent Administration of Estates Act, and this authority has been granted. With this authority, you are allowed to take certain actions in administering the estate without court approval by simply giving notice of your proposed actions to persons having an interest in the estate. I will provide you with further guidance on this procedure as the administration of the estate progresses. Please take no actions without conferring with me.

II. COLLECTION AND MANAGEMENT OF ASSETS

You are to take possession of all the decedent's property that is part of the decedent's estate. Although I will help you do this and will advise you on managing estate assets, this is your responsibility.

A. Valuables

Securities, jewelry, and other valuable items should be kept in a safe deposit box in the name of the estate. You should not put any estate assets in your own safe deposit box. Please let me know if there are any such items that you think should remain, or be placed, in the possession of another person.

B. Bank and Savings and Loan Accounts

1. The balance of each account that stood in the decedent's name alone should be transferred to an estate account. Note: You should first change the address of the decedent's existing accounts to your address so that tax reporting for the account is mailed to you at year end.
2. All of decedent's outstanding checks should be listed on an estate information checklist.
3. You should open an interest-paying checking account for the estate to maintain cash. If that is not feasible because the amount of cash is too small, you may use a non-interest-paying checking account until the estate has enough cash to open an interest-paying account.
4. Because estate funds may be used only for certain limited purposes, I recommend that you draw no checks on the estate account without consulting me. You must keep an accurate record of all deposits and withdrawals on the estate account. The record should show the amount and source of each deposit and the amount and purpose of each check. This record will be used to prepare any necessary accounting to be submitted to the court when the estate property is distributed.

C. Record of Decedent's Property; Insurance Considerations

So that I can prepare the inventory and appraisal of the estate's assets, you should prepare a complete list of all the decedent's property. Keep an accurate record of all amounts the estate receives as payment on medical insurance, debts due the decedent, and refunds, rebates, or similar items. As soon as I have collected the necessary information, I will prepare the inventory for your signature. After you have signed it, I will send it to the probate referee whom the court has appointed to appraise the estate's assets. For gift and estate tax purposes, I will need lists of all property that was held in joint tenancy and all contractual benefits passing outside probate, *e.g.*, insurance payable directly to a beneficiary, not to the estate, IRA benefits payable directly to an individual, or annuity benefits. I need a copy of all gift tax returns filed by the decedent.

1. Insurance Policies. Prepare a list of all the decedent's life insurance policies. I should also know about any beneficial interest the decedent had in anyone else's life insurance policies.

2. Insurance Riders. You should locate all other insurance policies of the decedent or contact the decedent's insurance broker, who may have the necessary information.

D. Management and Sale of Estate Property

It may become necessary to sell some of the estate's property, either because an item should be disposed of to avoid needless expense or loss through depreciation in value, or to raise cash to pay expenses, taxes, or general pecuniary gifts. Certain assets can be sold only with court authorization. Because probate sales are subject to many technical rules, you should not make any arrangements for the sale of any assets without consulting me.

As executor you are required to invest all cash not needed to administer the estate in interest-producing investments. There are limitations, however, on the kinds of investments you may make. Before taking action, you should consult my office.

The law provides considerable leeway for the executor's independent action unless the will expressly precludes administration of the estate under the Independent Administration of Estates Act. Actions under this law require minimal court supervision in the sale of estate assets, the payment of debts, and the conversion of investment assets to another form. Some actions under the Independent Administration of Estates Act will require a Notice of Proposed Action or waiver of notice.

III. HANDLING DEBTS AND TAXES

A. Creditors' Claims

When the petition to admit the will was submitted to the court, a concurrent notice to creditors was published in the manner required by law. In addition, now that you have been appointed personal representative, I must mail a notice to all creditors who have made demands either on the decedent or on the estate ("known" creditors) and to all reasonably ascertainable creditors. To ascertain creditors, you should go through the decedent's papers and make a list of the following:

1. The hospital or rest home, if any, where the decedent died.
2. All physicians or other health care providers who treated the decedent.
3. All ambulance companies used.
4. The landlord (if decedent rented) or mortgage holder (if decedent owned property).
5. All employees and providers of services (*e.g.*, gardener, cook, accountant, housekeeper).

6. Utility companies (*e.g.*, gas, water, electricity, telephone, cable television).
7. Note payees (may be found by reviewing tax returns for the list of interest deductions).
8. All credit card companies (at time notice of administration of estate is given to creditors, return card to creditors cut in half).
9. Anyone who sends a bill to the decedent.
10. Any securities broker who may have a margin account or other obligation due.
11. Those interested in the decedent's guaranties or contingent liabilities (which may appear on any financial statements of the decedent).
12. Business partners and others involved in similar co-ventures, such as limited liability companies.
13. Creditors of the decedent's business if it appears likely that there may have been personal guaranties or if the business is not incorporated.
14. If there appears to be anyone who may be a creditor or have a claim against the decedent, *e.g.*, if the decedent was in an auto accident before his death that potentially caused physical injury or property damage, list that potential creditor and discuss the potential creditor with me.

As you take actions to learn the identity of the creditors, you should keep a written record of the actions you have taken. This record becomes important if you inadvertently omit a creditor who then tries to make a claim after the period for filing claims has expired.

To be paid, the decedent's creditors must generally file a creditor's claim with the court within 4 months after the issuance of letters testamentary.

If any creditor demands payment from you, please let me know right away. Any claims not filed as described above are forever barred from collection. For your own protection, you should not pay any claims without consulting me.

You should let me know if there are claims you yourself have, including sums you may have advanced to pay last-illness or funeral expenses. These must be handled differently and most require court approval.

B. Income Taxes and Estate Taxes

As the personal representative, you will be responsible for various tax matters. You may need to provide the tax preparer with information about assets that are not part of the probate estate, such as insurance proceeds and retirement benefits payable to beneficiaries

other than the estate, and joint tenancy or community property assets that are distributable to the survivors as a matter of law without the need of probate administration.

1. **Income Tax Returns.** It will be necessary to prepare and file federal and state income tax returns for the decedent for the period from January 1 through the date of death. These returns are not due until their normal due date of the next April 15.

You may also be required to file income tax returns for the estate for each year until the final distribution. The estate is a separate entity for federal and state income tax purposes. There may be income taxes due in the state of death and ancillary administration state.

2. **Estate Tax Returns.** Depending on the gross value of the estate, it may be necessary to file a federal estate tax return. The federal estate tax return and the tax are due, with certain exceptions, 9 months after the date of death. Before the date on which the tax is due I will make a rough calculation of the federal estate tax to enable me to provide you with an outline of the estate's cash needs for estate taxes.

California has no inheritance tax or estate tax. However, an inheritance or estate tax return may be required for the decedent in a state other than California if the decedent held property in that other state.

C. Cash Needs

Once you are in a position to estimate creditors' claims, taxes, and cash on hand, I can determine whether the cash will be adequate or whether assets must be sold to meet the estate's obligations.

IV. DISTRIBUTING THE ESTATE

A. Preliminary Distribution

At any time 2 months or more after the first issuance of letters testamentary, it is possible to petition the court for a partial distribution of estate assets. However, a preliminary distribution can cause adverse income tax and estate tax results, and therefore the court must be satisfied that distribution may be made without loss to creditors or injury to the estate or any interested person. Consequently, I must carefully evaluate the benefits of a preliminary distribution before a decision is made to petition the court. If a preliminary distribution is ordered less than 4 months after the first issuance of the letters, the beneficiary will have to pay for and file a bond for the amount of the distribution.

B. Final Distribution

When all debts and taxes have been paid, including federal estate taxes, if any, and the estate is ready for final distribution, I will prepare for your signature a final account and report based on your record of receipts and disbursements. The account and report will ask the court to order distribution of the remaining estate assets to the beneficiaries. When the

court enters its order settling the account and report and ordering distribution of the balance of the estate assets, I will help you distribute the assets and obtain the necessary receipts. Ordinarily, assets should be distributed only on court order. If you feel an exception should be made, please consult me.

V. COMPENSATION

A. Executor's Compensation

1. Compensation for Ordinary Services. Under California law, you may receive compensation on the amount of the estate accounted for by you. Compensation is calculated as follows:

Probate Fees (for Administrator and Attorney, each)	Size of Estate (Gross Value)
4 % of first	\$100,000
3 % of next	\$100000
2 % of next	\$800,000
1 % of next	\$15 million

You may either accept or waive the compensation for your services as executor/administrator. If you accept your compensation, the estate will be entitled to deduct it in computing the taxable estate for estate taxes or, alternatively, in determining the taxable income of the estate. You are required to report this compensation as income. If you waive your entitlement to compensation, however, it will neither be paid and taxed to you nor deductible by the estate.

2. Compensation for Extraordinary Services. You are entitled to further allowances as the court may consider just and reasonable for extraordinary services, such as sales or mortgages of real or personal property; contested or litigated claims against the estate; preparation of the estate, income, sales, or other tax returns; litigation concerning estate property; carrying on the decedent's business under court order; and other litigation or special services as necessary.

B. Attorneys' Compensation

My fee agreement with you sets out the services that I will perform and how fees will be calculated for those services. As stated in the fee agreement, some of my services are covered by the fee for ordinary services and some by an additional fee or fee for extraordinary services. For my ordinary services, I as your attorneys are entitled to compensation at the same rate as your ordinary compensation. For any extraordinary services, the Probate Code provides that the court may set whatever fee it considers proper. Examples of extraordinary services are preparing the estate's death tax and income tax

returns, defending the estate in lawsuits, negotiating valuation of assets for estate tax purposes to establish the fair market value, and handling unusual sales transactions.

I hope that this general outline of your duties and the major events that will occur during administration of the estate will be useful. Although matters may arise that I have not covered, I want to assure you that I will try to minimize any inconvenience to you. Conversely, many of the matters mentioned above may not arise in this administration.

If you have any questions about the estate or if you need further details about any of the matters I have mentioned, please do not hesitate to let me know.

CHAPTER 7 – ASSETS INFORMATION GATHERING

Please locate and forward to me all documents regarding assets in which the decedent is named alone, with others, or as a joint tenant. Originals should be requested, or copies if originals are unavailable, including the following:

- Deeds;
 - Leases;
 - Contracts in which the decedent is named;
 - Partnership agreements;
 - Annuities and life insurance policies on the decedent's life or on the life of the decedent's spouse or registered domestic partner;
 - Documents showing any death or retirement benefits with the decedent's employer;
 - Property insurance (*e.g.*, fire, theft) and liability insurance policies;
 - Automobile ownership certificates (pink slips);
 - Trust instruments executed by the decedent, or by another if the decedent had an interest;
 - Account books;
 - California and federal income tax returns for the previous 5 years; and
 - All federal gift tax returns.
- Arrangements should be made for forwarding the decedent's mail to the personal representative. Assets or important information may come to light from this source. The postmaster will honor forwarding instructions if You provides the post office with a certified copy of the representative's letters testamentary or letters of administration.
 - Even before the personal representative is appointed, the post office will usually accept a notarized statement from the individual to be appointed as executor, together with a copy of the filed petition, that he or she is nominated as executor under the decedent's will or has petitioned to be appointed as administrator and that the mail should be

forwarded, pending the appointment. The statement can then be supplemented in the future with a certified copy of the letters issued by the court.

- If the decedent had authorized direct deposits to a savings or checking account for Social Security payments or employment retirement benefits, the best practical advice is to keep the bank account open until Social Security "directly" withdraws the overpaid amount. They will do this when notified of the death; once the deposit is withdrawn, the surviving joint tenant or You (with a certified copy of letters) should close the account, unless it will become the estate bank account. The notification to Social Security should be in writing, but a telephone call may serve as a prompt initial notification. If the direct deposits still continue, the bank will normally return the check with a notification that the account has been closed.
- **NOTE:** Mortuaries must notify Social Security of the death. It is best nevertheless to follow up with a phone call.
- You should invest all available cash in interest-bearing accounts (or other authorized investments) You should consider telephone transfer accounts to maximize interest earnings. Funds may be transferred to a lower-rate checking account only as needed. Before transferring existing accounts in the decedent's name into the estate's name, You must obtain a taxpayer identification number (TIN) for the estate from the IRS.
- You can then transfer the accounts by presenting the bank with a certified copy of y letters and requesting the transfer. You should sign a new signature card. Existing accounts that are transferred or new estate accounts that are opened should be held in the name of the representative, *e.g.*, "A.B. as Executor/Administrator of the Will/Estate of C.D.," or "Estate of C.D. by A.B., Executor/Administrator." The former is technically more correct, but either is acceptable as long as the title clearly reflects the official capacity of the representative.
- You should limit the total amount (taking into account any interest anticipated to be earned) of each account with an institution, including its branches, to insured limits of federal deposit insurance or federal savings and loan insurance (currently \$250,000). If there is a large amount of cash on hand beyond the needs of the probate administration, you should consider placing some cash in a blocked account in order to reduce the bond.
- Except in very small estates, it is advisable for you to order printed and prenumbered checks for the estate account. This avoids confusion with the representative's personal account and ensures an accounting for each check.
- You should be warned against commingling estate funds with personal funds and should be counseled to identify carefully the nature of each expenditure.

Estate assets should not be kept in a personal safe deposit box. The estate may include documents, jewelry, securities, or other items that should be kept in an estate safe deposit box. If the decedent had a safe deposit box and you choose to rent one for the estate at the same bank, you should have the decedent's box transferred into the estate's name. If you intends to open an estate box in another bank, however, arrangements must be made to transfer the box's contents to the other bank. If there are negotiable papers such as bearer bonds or other valuable items such as jewelry, it is advisable to use an interbank delivery service.

If you are worried that someone will accuse him or her of stealing estate assets, the personal representative should ask bank personnel to accompany him or her and make an inventory of the contents of the box.

NOTE: In every case you responsible for inventorying the contents of the decedent's safe deposit box